

HEALTH AND SENIOR SERVICES**DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING****Public Notice****Moratorium Affecting Licensure of Adult Day Health Care Facilities and Services**

Take notice that, in accordance with the provisions set forth in N.J.S.A. 26:2H-1 et seq., the Commissioner of the Department of Health and Senior Services shall not accept licensure applications for new or expanded adult day health care facilities and services, effective immediately and for 12 months thereafter. Licensing applications for adult day health care facilities and services formally submitted to the Department prior to the publication date of this notice shall continue to be reviewed by the Department for acceptability for licensure. The Commissioner shall review the moratorium prior to its expiration to determine if the moratorium shall terminate or be extended. If no notice is published to extend the moratorium, it terminates one year after November 3, 2008. This action is taken because the Department has determined, based on survey activity, that it is necessary to develop new licensure standards to replace those at N.J.A.C. 8:43F and new clinical eligibility and prior authorization standards at N.J.A.C. 8:86. This moratorium on adult day health care licensure processing is necessary to protect the health, safety and welfare of the population served within adult day health care facilities. The adult day health care participant population's interests are best served through the promulgation of appropriate licensure and eligibility standards and the Department's survey and enforcement activity. The recent survey activity carried out by the Department concerning adult day health care facilities demonstrates that the Department's licensure and prior authorization regulations governing this service require amendment to maintain appropriate utilization, access, and services.

Since January 2007, 88 adult day health services facilities have been approved to conduct prior authorizations under N.J.A.C. 8:86-1.5(d). The Department has found it necessary to revoke the privilege to conduct eligibility assessments in 41 facilities on the Department's behalf for failing to reassess a participant's condition as required under N.J.A.C. 8:43F-5.4(c) and for failing to discharge a participant who is no longer appropriate for services under N.J.A.C. 8:43F-5.4(d)1.

The Department has approximately 11,449 adult day health services slots in 131 facilities with applications pending for 3,079 slots. Of these 3,079 slots, 2,783 are pending for 26 new facility applications, with the remainder of 296 slots pending for the expansion of seven existing facilities. There has been a dramatic growth in the number of slots available since the prior moratorium was lifted on October 1, 2006 (38 N.J.R. 3324(c)), with even more slots and facilities pending in the licensing pipeline. Coupled with an increase in the number of shifts currently licensed facilities are offering, 50 in the past year, the Department has witnessed an unexpected growth in the number of prior authorization requests the Department has received. In a recent monitoring blitz of six facilities conducted by the Office of Community Choice Options, Division of Aging and Community Services,

staff discovered that approximately 95 percent of participants who had been approved for services by a facility under N.J.A.C. 8:86-1.5(d) were not appropriate recipients of services at the time of the Department's visit.

The moratorium is necessary to prevent the proliferation of facilities with deficient policy practices that are serving medically fragile adults. The adult day health services participant population's interests are best served through the promulgation of appropriate rules governing licensure, Medicaid eligibility standards and the Department survey and enforcement activity. Recent and continuing survey and enforcement activity carried out by the Department concerning adult day health services facilities demonstrates overwhelmingly that the Department's licensure and eligibility regulations governing this service require revision and the industry requires closer regulatory scrutiny on the whole. This moratorium allows limited personnel resources of the Department to be focused on ensuring that currently licensed adult day facilities are providing appropriate services to appropriate recipients. Departmental resources will be focused upon monitoring surveys to ensure that existing facilities are complying with licensing standards and would permit staff engaged in prior authorizations to continue reviewing the appropriateness of recipients who have been approved under N.J.A.C. 8:86-1.5(d).

Therefore, it is necessary for the Department to temporarily cease accepting licensure applications for new or expanded adult day health care services. This moratorium applies to both applications for new facilities, existing facilities adding additional shifts, as well as applications for the expansion of adult day health care program slots within already-licensed facilities. Any person holding an adult day care license may undertake activities to construct and operate a replacement facility with the same or lower census as is presently licensed provided that such replacement facility may only be licensed upon the otherwise unconditional cessation of operation of the previously licensed adult day care. Transfer of ownership licensure applications shall also continue to be reviewed by the Department as long as they do not result in additional licensed entities or slots. The current moratorium for pediatric day health care facilities remains in effect.